
BILL NO.: Senate Bill 28
TITLE: Family Law – Legal Decision Making and Parenting Time
COMMITTEE: Judicial Proceedings
DATE: January 31, 2023
POSITION: **SUPPORT**

Senate Bill 28 would provide a much-needed overhaul and update to our custody laws in Maryland. The Women’s Law Center supports Senate Bill 28 because it codifies existing Maryland case law regarding custody determinations using the best interests of the child standard. It would also make language changes to better identify and support the relationships between parents and children. SB 28 is the revised product of a more than one year Child Custody Decision-Making Commission almost 10 years ago that by a majority agreed the “best interests of the child” standard remains the best way for courts to make custody decisions. The language of this bill is modified from prior years’ efforts, to reflect language used in the now mandatory parenting plans.

Currently, there is no statute that sets out the factors a court must consider in making a custody determination. Codifying case law, especially for self-represented litigants, would be of great benefit to our litigants and courts. No current statute clearly articulates all factors to be considered. Judges, lawyers, and litigants must interpret case law and do not have the benefit of a legislative description of the factors to be considered. This is particularly problematic for self-represented litigants who are hampered in their ability to appropriately present their case for custody and/or visitation without clear and accessible law. In some jurisdictions, as many as 80% of custody cases have one or both parties unrepresented by an attorney. Senate Bill 28 incorporates standards developed by Maryland courts in case law into statutory provisions and carefully outlines the mandatory and non-mandatory factors that a court considers, as well as factors a court may not consider. It also updates our laws to reflect society today. *At the very least*, changing the language of child access determinations would benefit families in Maryland and perhaps change dialogue and attitudes. On our statewide Family Law Hotline we so often hear people describing being engaged in a “custody battle.” Terms such as “visitation” support outdated thoughts about parenting, and do not help parents to move forward in a healthy manner.

Senate Bill 28 would not preclude a court from ordering joint legal and/or shared physical “custody.” Instead, by focusing always on the impact of child access arrangements on the children involved in a case, SB 28 recognizes, as does current case law, that custody decisions should be child focused, and that each case is unique and requires an individualized evaluation of what is in the best interests of the child. The Women’s Law Center recognizes and deeply respects the benefits of having both parents actively involved in a child’s life. However, it is appropriate only when the parents are able to work together in the best interests of the child, but can be damaging and dangerous in inappropriate situations, such as where there is domestic violence.

For these reasons, the Women’s Law Center urges a favorable report on Senate Bill 28.

The Women’s Law Center of Maryland is a private, non-profit, membership organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change.